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Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace Implementation of Section 254(g) of the Communications Act of 1934, as amended	CC Docket No. 96-61

REPLY COMMENTS OF
CENTENNIAL CELLULAR CORP.

Centennial Cellular Corp. ("Centennial") files these comments in reply to those parties who oppose the Petitions for Reconsideration and Petitions for Forbearance in this matter.[1] Centennial fully supports the petitioners. Centennial files these reply comments to emphasize the inherently flexible nature of what constitutes an "interexchange" call under the relevant definitions in the Communications Act of 1934, as amended (the "Act"), and the application of those definitions to Commercial Mobile Radio Service ("CMRS") providers. It appears that Alaska understands the proper application of the statute, but that Hawaii does not.[2]

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[1] Petitions for Reconsideration and/or Forbearance were filed by AirTouch Communications (Petition for Reconsideration (filed October 3, 1997) ("AirTouch Petition"); Bell Atlantic Mobile, Inc. (Petition for Reconsideration and Petition for Forbearance (filed October 3, 1997)) ("BAM Petition"); BellSouth Corporation (Petition for Reconsideration and Forbearance (filed October 3, 1997)) ("BellSouth Petition"); CTIA (Petition for Clarification, Further Reconsideration, and Forbearance of the Cellular Telecommunication Industry Association (filed October 3, 1997)) ("CTIA Petition"); PCIA (Personal Communications Industry Association Petition for Forbearance or Reconsideration (filed October 3, 1997)) ("PCIA Petition"); PrimeCo (Petition for Reconsideration or, in the Alternative, Petition for Forbearance of PrimeCo Personal Communications, L.P. (filed October 3, 1997)) ("PrimeCo Petition"); and TDS (Petition for Partial Reconsideration of Telephone and Data Systems, Inc. (filed October 3, 1997)) ("TDS Petition"). These Petitions were opposed in various respects by the State of Hawaii (Opposition of the State of Hawaii (filed October 31, 1997)) ("Hawaii Opposition") and by the State of Alaska (Opposition of the State of Alaska to Petitions for Reconsideration (filed October 31, 1997)) ("Alaska Opposition").

[2] *See* Alaska Opposition at 15; Hawaii Opposition at 20.

Under Section 254(g), rate integration applies to "interexchange" service, a term not formally defined in the Act. The Act does define "telephone exchange service" in Section 3(47). That definition is somewhat circular, however: "telephone exchange service" is

> (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.

The contrasting term in the definitions section of the Act is not "interexchange service," but instead "telephone toll service" in Section 3(48):

> The term "telephone toll service" means telephone service between stations in different exchange areas for which there is made a separate charge not included in contracts with subscribers for exchange service.

Both Hawaii and Alaska have correctly recognized that the term "interexchange" service in Section 254(g) has the same meaning as "telephone toll service" in Section 3(48).[3] In the landline context, therefore, rate integration applies to "interexchange" or "telephone toll" calling, but not to "local" or "exchange" calling.

For garden-variety landline LEC services, the circularity of the definition of "telephone exchange service" is not so much a defect as an acknowledgement of the fact that different states have established different local calling areas, *i.e.*, areas within which calling is "covered by the exchange service charge." On the landline side, therefore, the matter is actually fairly simple. The scope of a local calling area (that is, of "telephone exchange service") is

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[3] Hawaii Opposition at 21-22; Alaska Opposition at 2-3.

whatever the LEC's tariff says it is.[4] And if a particular state regulator disagrees with a LEC's tariff proposals on this topic, the regulator can overrule the LEC and establish different local calling areas.[5]

The boundaries between landline "exchange" calls and landline "interexchange" (or "telephone toll") calls, therefore, are inherently flexible. Indeed, those boundaries have been subject to repeated tinkering by state regulators and landline LECs as issues such as extended area calling plans, local measured service, and the benefits of large versus small local exchange areas have been debated in light of evolving communities of interest among different locations, universal service considerations, and other factors.

What matters in the context of the present proceeding is to realize that what constitutes a landline local call has always been established entirely on the basis of such policy and regulatory considerations, not on any inherent network-related or other technological concerns. For example, whatever policy arguments one could muster for or against such an action, no one would question the ***authority*** of Bell Atlantic to propose to the Maryland PSC that all calls within the Baltimore LATA would be "local" calls covered by an "exchange charge," or the ***authority*** of the Maryland PSC to approve such a proposal. And in a regulatory environment where LATAs themselves are irrelevant (as eventually contemplated by Section 271 for the former Bell companies, for example), surely Bell Atlantic could propose, and the Maryland PSC could approve, a statewide local calling plan. On the other hand, it is equally permissible for Bell Atlantic, subject to the authority of the Maryland PSC, to vastly shrink its current local calling areas, and declare all calls outside of one's home exchange to be "toll" calls, so that calls from Rockville to Silver Spring or Silver Spring to Hyattsville would no longer be part of "exchange" service, but instead part of "toll" service.

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[4] A carrier's local exchange tariff establishes the terms of the "contracts with subscribers for exchange service" referred to in Section 3(48) (defining "telephone toll service") and the scope of the services a subscriber receives for paying "the exchange service charge" referred to in Section 3(47) (defining "telephone exchange service").

[5] *See* BellSouth Petition at 17-20 & n.66 (noting decisions where this Commission has recognized the nature of local calling areas and the role of state regulators in establishing them).

It is also noteworthy that nothing in the traditional landline notion of a local call limits such calls to those handled by a single carrier or those confined to the boundaries of a single state. It is commonplace for adjacent landline LECs to offer local service that includes portions of both of their service territories.[6] Similarly, where landline LECs and state regulators have chosen to establish an ***interstate*** landline local calling area (such as the Washington, D.C. area, among others), that is expressly contemplated by the Act.[7]

In sum, landline local calling areas may be large or small; they may include territory served by one LEC or several; and they may cross state lines. All that matters is that the calls be covered by the "exchange service charge" in "contracts ... for exchange service." If they are, then the rate integration requirements of Section 254(g) do not apply, because the calls are not "interexchange" ("telephone toll") calls under the terms of the Act.[8]

These principles can be applied to CMRS providers in a simple and straightforward manner. The typical CMRS carrier's "exchange service charge" is comprised of two components: a flat monthly charge and additional airtime charges. Calls that a CMRS subscriber can make by paying the flat monthly charge and applicable airtime charges are not "interexchange" calls;

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[6] The existence of such arrangements was the source of substantial controversy in implementing the requirement of Section 252(a) that LEC-to-LEC agreements for the exchange of "local" traffic that pre-dated the Telecommunications Act of 1996 be submitted to state regulators for approval. The FCC ruled that such agreements must be submitted; the 8th Circuit concluded that this was a question for the states. *See* Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, *First Report and Order,* 11 FCC Rcd 15499 (1996) ("*Local Competition Order*") at ¶¶ 157-71, *reversed on this point, Iowa Util. Bd v. FCC,* 120 F.3d 753 (8th Cir. 1997). While the Commission and the 8th Circuit disagreed on the application of Section 252(a) to these agreements, the scope of the controversy itself established that such agreements — reflecting inter-company local calling — are not at all uncommon.

[7] *See* 47 U.S.C. § 221(b); *Puerto Rico Telephone Company v. FCC,* 553 F.2d 694, 698-99 (1st Cir. 1977).

[8] In this regard, in the landline context, any number of states permit charges such as message unit or per-call charges to apply to plainly local calls. For example, businesses in both Maryland and Virginia are assessed such charges for local calls. Toll calls (whether intra-LATA or inter-LATA) are rated separately. The fact that a call is not included in a flat-rated calling plan, therefore, does not mean that the call is not part of telephone exchange service, as opposed to telephone toll service.

they are local calls.[9] No such charges, therefore, may properly be subject to the rate integration requirements of Section 254(g). On the other hand, if a CMRS provider charges separate long distance charges for some calls, ***those*** charges are not part of the "exchange service charge." It is only ***these*** charges that could ever possibly be subject to the requirements of Section 254(g).[10]

This is not a situation in which the term "interexchange" is in any way unclear or ambiguous as it relates to CMRS providers. Calling included under "the exchange service charge" is local calling; calling for which a separate toll charge applies is interexchange calling. What is distinctive about the CMRS situation is that, pursuant to Section 332(c) and the Commission's decisions under it, CMRS providers are permitted to decide which calls count as "local" and which calls count as "toll," without active supervision by the Commission or state-level regulators.[11]

This situation has led to diversity in CMRS calling plans, and to frequent changes in those plans as competitive conditions vary.[12] The lack of uniformity of, and frequent changes in, CMRS local calling plans is disconcerting when compared to the stolid simplicity and slow

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[9] Various parties in this docket have made this point without expressly tying it to the statutory definition. *See, e.g.,* BellSouth Petition at 17-19. And, as noted above, the fact that a landline calling plan might not permit (or mandate) ***flat-rated*** calling within a local calling area does not mean that the local calls become toll calls. The same logic applies to CMRS calling plans.

[10] Centennial supports the various parties requesting the Commission to forbear from applying Section 254(g) to CMRS providers at all, including any separate long distance charges those providers might impose. *See, e.g.,* PCIA Petition at 4-5; PrimeCo Petition at 24-25; CTIA Petition at 10-11; BAM Petition at 15-16. Centennial's point here, however, is simply that such charges are the only ***possible*** CMRS rates to which Section 254(g) could ever apply.

[11] In this regard, it was perfectly appropriate for the Commission to establish MTAs as a single and easily administrable "standard" area within which traffic is treated as "local" for purposes of interconnection arrangements between LECs and CMRS providers under Sections 251 and 252 of the Act. *See Local Competition Order* at ¶¶ 1035-36, *affirmed on this point, Iowa Util. Bd v. FCC,* 120 F.3d 753 (8th Cir. 1997). The classification of ***end user rates*** as toll or local, which is the subject of Section 254(g), is not directly affected by Sections 251 and 252. Instead, it is governed by Sections 3(47) and 3(48) of the Act, as discussed above.

[12] *See, e.g.,* BellSouth Petition at 17-19; PCIA Petition at 6-7; PrimeCo Petition at 13-14.

evolution of landline local calling areas. Once this attack of the regulatory jitters passes, however, there is no other principled conclusion than that outlined above. Because CMRS offerings are not tariffed, CMRS providers may offer state-wide, MTA-wide, region-wide, or nationwide local calling, simply by offering a rate plan that allows such calls to be made by the payment of a monthly fee and airtime charges. Only those calls that the CMRS provider chooses ***not*** to include within the scope of one of its local calling plans — that is, only those calls to which a separate "long distance charge" applies — can reasonably be viewed as "toll" or "interexchange" calls subject to Section 254(g).[13]

Applying these principles, it is clear that Alaska has it right and Hawaii has it wrong. Alaska states that "[i]nterstate CMRS calls for which there is not a ***toll charge*** may not properly be subject to rate integration requirements because they are not considered interexchange calls." Alaska Opposition at 15. In contrast, Hawaii — not yet over the regulatory jitters — insists that "[i]t should not matter whether the interexchange charge is expressly labelled 'interexchange' on a customer's bill, or is assessed indirectly through higher access fees or through higher per-minute airtime rates." Hawaii Opposition at 20. The statutory definitions of "telephone exchange service" and "telephone toll service" quoted above, however, show that the precise distinction that Hawaii says "should not matter" is exactly what ***does*** matter. If calling within a particular area is "covered by the exchange service charge" or "included in contracts with subscribers for exchange service," that calling is local calling. Similarly, calls not subject to a "***separate***" toll charge (as provided in Section 3(48) of the Act) are not interexchange calls, and Section 254(g) does not apply to them.

Aside from being wrong as a matter of statutory interpretation, Hawaii's claim that CMRS providers should not be permitted to "hide" implicit long distance charges in higher recurring fees and/or airtime charges also ignores the reality of local calling area economics. Typically, it costs a LEC more to provide a large local calling area than a small one, so

[13] If a CMRS provider does not itself act as a long distance carrier, but instead simply directs long distance calls to another carrier for completion and billing, then any rate integration obligations would apply only to the long distance carrier, not to the CMRS provider.

customers with large local calling areas typically pay higher local exchange service rates than those with small local calling areas. Higher local charges for large local calling areas are also frequently justified on the ground that the larger local calling area constitutes a more valuable service for which a higher charge is reasonable. These same principles apply to CMRS providers' local calling plans.

In sum, much of the confusion surrounding the application of Section 254(g) to CMRS providers can be resolved by noting the simple distinction articulated above. CMRS providers who separately charge for certain calls as long distance calls — absent forbearance, which should be granted — may lawfully be (but should not be) required to rate-integrate the separate charges for ***those long distance services.*** No other CMRS calls — irrespective of the geographic scope of calling allowed under a CMRS monthly-fee-plus-airtime calling plan — constitute "interexchange" calls subject to rate integration. To the contrary, such calls are clearly "local" calls under applicable definitions in the Communications Act.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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